



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 02-60; FCC 12-74]

Rural Health Care Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireline Competition Bureau (the Bureau) maintains support on a limited, interim, fiscally responsible basis for specific Rural Health Care Pilot Program participants that have exhausted their funding this year or will exhaust such funding during funding year 2012 to ensure that they can continue to benefit from access to these Pilot Program-funded broadband networks, while the Commission considers potential reforms to transition recipients of Pilot funding to a longer-term mechanism for supporting broadband services delivered to rural HCPs. This interim support will preserve transitioning Pilot Program participants' connectivity and the resulting health care benefits that patients receive from those investments made by the Commission in health care broadband networks.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Linda Oliver, Wireline Competition Bureau at (202) 418-1732 or TTY (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in WC Docket No. 02-60; FCC 12-74, adopted July 5, 2012 and released July 6, 2012. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpweb.com>.

I. Introduction

1. In this order, we maintain support on a limited, interim, fiscally responsible basis for specific Rural Health Care Pilot Program (Pilot Program) participants that have exhausted their funding this year or will exhaust such funding during funding year 2012. We will provide continued support for the recurring costs of broadband services provided to those health care provider (HCP) sites to ensure that they can continue to benefit from access to these Pilot Program-funded broadband networks, while we consider potential reforms to transition recipients of Pilot funding to a longer-term mechanism for supporting broadband services delivered to rural HCPs. This interim support will preserve transitioning Pilot Program participants' connectivity and the resulting health care benefits that patients receive from those investments made by the Commission in health care broadband networks. Today's action stays within the budget of the Pilot Program and will therefore not impact overall demand for the universal service fund (USF or Fund).

II. Discussion

2. The USF Rural Health Care support mechanism consists of the "Primary" program and the "Pilot" program. The Commission created the Pilot Program in 2006 in an effort to examine ways to use the RHC support mechanism to enhance public and non-profit HCPs' access to advanced telecommunications and information services. Participants in the Pilot Program are eligible to receive universal service funding to support up to 85 percent of the cost of construction of state or regional broadband health care networks and of the cost of advanced telecommunications and information services provided over those networks. Through the Pilot Program, projects have created health broadband networks that consist of multiple interconnected HCPs, often in a hub-and-spoke configuration, that typically connect rural HCPs to larger, more urban medical centers. The networks created by these projects enable rural HCPs to access medical specialists, technical expertise, and other resources that are usually found only within the larger HCPs on the network.

3. Approximately 13 out of the 50 active projects have some individual HCPs that have spent all of the money allocated to them, or are scheduled to do so during funding year 2012. According to the Universal Service Administrative Company (USAC), some HCPs may exhaust their funding in the last few months of Funding Year 2011, and an estimated 484 HCPs (or 22.5 percent of individual HCP sites

participating in the Rural Health Care Pilot projects) are expected to exhaust their allocated funding before or during funding year 2012.

4. Through this order, we provide funds to support ongoing connectivity to Pilot Program HCPs that will exhaust funding allocated to them before or during funding year 2012. Such funding is necessary to “bridge” their participation in the Pilot Program and their participation in any reformed Rural Health Care programs under consideration. Accordingly, as discussed below, we direct USAC to provide continued support to Pilot projects for up to 85 percent of eligible recurring costs for those individual HCP sites on their networks that will exhaust their funding on or before June 30, 2013, including those that will have exhausted their funding before the effective date of this order. Bridge funding will maintain support for this limited number of HCPs and in doing so help ensure that they will remain connected to the broadband networks developed with Pilot Program funding, while providing the Commission additional time to consider how best to transition Pilot Program participants to permanent Rural Health Care funding programs. Thus, this support will help maintain the status quo for the many patients and communities that benefit from the telemedicine and other telehealth applications made available by the Pilot projects during this transition period. Consistent with this objective, the support is limited in time and scope and does not provide new funds for Pilot projects to expand their networks.

5. This bridge funding will not increase the demand on the Fund relative to what was already designated for Pilot Program projects. Accordingly, we direct USAC to use up to \$15 million of the Pilot Program funds that were previously set aside for projects that either withdrew from the Program or otherwise failed to meet program deadlines to provide bridge funding to transitioning Pilot project participants. These funds were designated for Funding Year 2009 and have already been collected. Thus, there will be no effect on Fund demand for the next year as a result of our action today.

6. We are mindful that if we do not provide bridge funding, Pilot project participants that will exhaust their support under the Pilot Program could be required to “transition” twice, within a relatively short time period, to different RHC programs – the Primary Program and, potentially, any programs that may ultimately be adopted by the Commission in the pending Rural Health care rulemaking. As discussed above, there are significant differences between the Pilot Program and the Primary Program,

and the Commission is still considering how best to reform the existing program consistent with our overarching goals to promote access to broadband for health care providers. Almost every commenter responding to the Bridge Public Notice, 77 FR 14364, March 9, 2012, supports the provision of “bridge” funding for funding year 2012. These commenters state that without an orderly transition, many of the individual HCP sites are at risk of discontinuing participation in their respective networks. For example, the Palmetto State Providers Network (PSPN) states that its individual members, especially in rural locations, “often do not have the resources or time to navigate the RHC Primary program process” and that allowing the RHC Pilot networks to continue to bill and operate as a consortium would be more administratively efficient. PSPN, a state-wide backbone network that connects rural and underserved areas in South Carolina, notes that uncertainty regarding the transition of HCPs from the Pilot Program has caused some of its HCPs to consider discontinuing their participation despite the demonstrated benefits of the network. Similarly, the two Colorado Pilot projects, Rocky Mountain HealthNet and Colorado Health Care Connections state that “the value developed under the Pilot Program would be placed at risk if certain Pilot projects have to face the significant difficulties of temporarily transitioning to the existing Primary Program.” Geisinger Health Systems also states that ending Pilot Program support for HCPs on its network, without providing a process to transition them into a permanent RHC support mechanism, may cause some members of its network to drop out.

7. **Duration of Bridge Funding.** We provide support only through the end of funding year 2012 (through June 30, 2013). The two Colorado pilot projects suggest that the Commission extend bridge funding beyond funding year 2012, until a permanent rural health care program is established and participants are able to complete the application and award process. Geisinger suggests that the Commission should continue to provide support through the Pilot Program until all rural and underserved areas have the same connectivity opportunities as urban areas. We intend bridge funding to be a temporary measure, and we expect to issue an Order on reform of the permanent rural health care mechanism by the end of this year, which will make additional bridge funding unnecessary. We therefore decline to grant these requests.

8. **Service Substitutions.** HCPs that will exhaust funding allocated to them before or during

year 2012 may use bridge funding support for service substitutions. The Pilot Program has demonstrated that service substitutions allow HCPs to manage their networks efficiently, and have the effect of decreasing overall demand on the Fund. USAC notes that over time Pilot projects have requested three types of service substitutions: (1) upgrading to fiber when it becomes available through the project's services provider; (2) increasing the bandwidth of an HCP on their network; and (3) disconnecting service to a participating HCP site. Bridge funding can be used for recurring and non-recurring charges, such as installation charges, associated with service substitutions that will allow participating sites to upgrade or downgrade their existing circuits. Bridge funding may not be used to add new circuits to a site, unless adding or replacing a circuit is necessary to complete a service substitution for an existing circuit or service. Allowing HCPs the ability to substitute their existing service with more or less bandwidth will ensure that their connectivity needs are being met, allowing them to increase or decrease bandwidth on existing circuits depending on their assessment of their own healthcare-related needs, and will help ensure that the Fund is used efficiently.

9. **Non-recurring Charges.** Bridge funding cannot be used for any non-recurring costs other than those associated with service substitutions. The limited purpose of this interim funding is to maintain Pilot project HCP connectivity while we consider how best to transition the projects to a long-term funding program, not to fund additional construction or network expansion during this time. We note that no commenters suggested that funding for non-recurring charges (other than for service substitutions) is necessary to maintain the individual HCP sites on the Pilot project networks during this period.

10. **Site Substitutions.** Bridge funding may only be used to support eligible HCP sites that participated in the Pilot Program at a specified location before June 30, 2012. Projects cannot use bridge funding to substitute sites or add new sites to their network, or to fund existing sites that move to a new location after June 30, 2012. However, Pilot project HCP sites that have exhausted their funding before the effective date of this order may use bridge funding to "reconnect" sites that participated in the Pilot Program at a specified location during funding year 2011. As discussed above, the purpose of this funding is to maintain the status quo and to avoid unnecessary churn for the Pilot projects, and we decline

to provide funds to enable Pilot projects to expand or modify their networks.

11. **Process for Obtaining Bridge Funding.** Pilot Program participants eligible to receive bridge funding must submit a new FCC Form 466-A package for all eligible funding requests by March 30, 2013. Invoices of actual incurred eligible expenses must be submitted to USAC by December 31, 2013. These measures will help ensure that bridge funding is efficiently managed, and will protect against potential waste, fraud, and abuse. HCPs currently receiving support for services eligible for bridge funding do not have to re-file an FCC Form 465 to continue receiving support in funding year 2012, as long as the contract under which those services are provided is valid until June 30, 2013. Because HCPs have already gone through the competitive bidding process to identify and select the most cost-effective service provider in instituting these contracts, sufficient safeguards are in place to protect against waste, fraud, and abuse, without requiring HCPs to conduct a competitive bidding process again. However, in instances where the contract for eligible services ends before or during funding year 2012, or is not an “evergreen” contract that is valid until June 30, 2013, HCPs seeking bridge funding must complete the competitive bidding process and submit a Form 465 to seek additional funding for the period of time not covered by their existing contract. We find that requiring these HCPs to complete the competitive bidding process is consistent with Pilot Program procedures, will help protect against waste, fraud, and abuse, and will help ensure that HCPs will choose the most cost-effective alternatives.

12. **Reporting Requirements.** USAC should allocate and account for bridge funding as part of the last funding year of the Pilot Program (funding year 2009) in its reports to the Commission. The overall award for those Pilot projects receiving bridge funding will be amended to reflect the original amount awarded to the projects plus any bridge funding received.

13. **Program Rules.** Except as otherwise discussed in this order, all rules regarding the Pilot Program remain in effect and are applicable to any bridge funding received by Pilot Program participants.

14. **Effective Date.** We find good cause to make this order effective upon publication in the Federal Register rather than 30 days after publication. Some Pilot project HCPs may exhaust all of the funding allocated to them in the last few months of Funding Year 2011. As a result, until this order becomes effective, these projects may be required by their service providers to pay the entirety of their

recurring services charges until they are able to receive RHC support again, which could create hardship for some. Moreover, it takes approximately four weeks for USAC to process and send funding commitment letters to projects, which allows the projects to receive discounted rates from service providers. Requiring projects to wait an additional 30 days after publication in the Federal Register to file requests for funding commitment letters will only result in further delay, as many projects will be ready to request funding from USAC as soon as this order is released. Accordingly, we find that there is good cause to make this order effective immediately upon publication in the Federal Register, in order to eliminate a potential gap in RHC support and to preserve connectivity that has been developed under the Pilot Program.

III. Procedural Matters

A. Final Regulatory Flexibility Certification

15. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

16. In this order, we maintain support on an interim basis for Pilot Program participants that will exhaust funding allocated to them before or during funding year 2012 (July 1, 2012 - June 30, 2013). The order does not significantly modify the rules of the Pilot Program to create any additional burden on small entities, imposes no new burden on any company, and has no negative economic impact on any company.

17. Accordingly, we certify that the measures taken herein will not have a significant impact on a substantial number of small entities. The Commission will send a copy of this Public Notice, including

this certification, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, this document (or a summary thereof) and certification will be published in the Federal Register.

B. Paperwork Reduction Act Analysis

18. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

19. The Commission will send a copy of this order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

20. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201, 254, and 403, this order IS ADOPTED, and SHALL BECOME EFFECTIVE **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, pursuant to 5 U.S.C. 553(d)(3) and §§ 1.4(b)(1), 1.103(a), and 1.427(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), 1.427(a).

21. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.